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December 27, 2021

Mr. Robert Finamore  
Chief, Foreign Licensing Division  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC. 20590

VIA E-MAIL

Re: Statements of Authorization  
DOT-OST-2020-0011  
Icelandair

Dear Mr. Finamore:

This letter is submitted for the Department's consideration as the reply of Icelandair (ILRF049F), to the December 23, 2021 objections of Swift Air, LLC. d/b/a iAero Airways (Swift), to our pending application for an allotment from the 2021-2022 Cuba pool and corresponding 4540 applications (MCO-HAV; MIA-HAV and IAH-HAV).

Icelandair submits that Swift's objection is entirely misplaced and does not warrant denial of the instant applications presently before the Department. The Department should properly grant Icelandair's requested allotment from the 2021-2022 Cuba pool and the corresponding 4540s, for the following reasons.

With respect to Swift's objection based on "undue reliance", Swift correctly states that, in the 12 month period immediately preceding its instant applications, Icelandair operated 1,601 scheduled round trip flights between Iceland and the United States (pursuant to the US-EU Open Skies Treaty). This number, however, reflects a very sudden and very severe reduction in the total number of scheduled flights normally operated. This reduction was not a matter of choice, but instead the direct result of the pandemic alone and, therefore, wholly beyond Icelandair's control. As the Department is aware, both the CDC and CBP severely restricted travel to the United States from Europe (including Iceland), to virtually all non-U.S. citizens/permanent residents - for a very extended period. At the same time, European

countries served by Icelandair imposed similar travel restrictions on U.S. citizens..<sup>1</sup>

Swift may be unaware that, immediately prior to the pandemic, Icelandair operated scheduled flights from Iceland to 14 cities in the United States. It served some of these cities (JFK, BOS, EWR, IAD, SEA), as many as 10-14 times weekly. And as the Department is also aware, Icelandair has operated daily scheduled flights to the United States since 1948. CBP will quickly confirm this.

This temporary and unavoidable reduction of Icelandair's scheduled U.S. flights (for 70+ years), should not properly operate to deprive it of the relief it now seeks. Such would clearly be inconsistent with the intent of Congress and not in the public interest. And the Department should properly reject Swift's "undue reliance" objection.<sup>2</sup>

With respect to Swift's objection based on a purported lack of "reciprocal economic opportunity", this too does not warrant denial of Icelandair's instant applications. It is Icelandair's understanding that the Department has already properly rejected identical objections.

Swift points out that the population of Iceland is now approximately 354,000 persons and it claims that the economic opportunity for U.S. carriers, therefore, is unequal to that in the U.S. for Icelandair. On this basis, Swift urges the Department to deny Icelandair's applications. As the Department knows, the regulation, 14 CFR 212.10 (c) requires reciprocity. It says nothing about any highly subjective analyses of [equal] "reciprocal economic authority required".<sup>3</sup>

If Swift's objection is correct, (denial based on any purported lack of equal economic authority with Iceland), the Department would be required to summarily deny all other applications from all carriers of every other country in the world. This is so because the United States is the world's largest economy. If the Department were to sustain Swift's objection on this basis, such would constitute nothing short of a de facto administrative repeal of the statute authorizing charter flights. Reciprocity is exclusively between governments. Denial on this basis would directly and negatively impact diplomatic relations. With respect to Iceland, a negative impact on a longstanding and ongoing stalwart ally of the United States.<sup>4</sup> This clearly would not serve the public interest.<sup>5</sup>

In its objection, Swift says that "iAero is putting [its] resources back to work" and claims that the

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<sup>1</sup>Swift helpfully points out in its objections that U.S. carriers are only now recovering from the pandemic. But U.S. carriers are not alone. Icelandair has suffered severely (if not disproportionately) and it too is also now recovering.

<sup>2</sup> Swift's "undue reliance" objection doesn't make any sense. Congress did not intend for Icelandair to be deprived of the requested authority as a result of these very exceptional global circumstances. The law properly serves as a shield - not as a sword.

<sup>3</sup> U.S. - Iceland reciprocity is current and in effect through May 21, 2022. DOT-OST-2006-24269.

<sup>4</sup> For 60+ years, Iceland warmly welcomed the United States Air Force base in Keflavik.

<sup>5</sup> Upon information and belief, Iceland has not denied any similar applications made by any U.S. carrier.

grant of the relief now sought by Icelandair would "delay the recovery of iAero....". It then says it has aircraft available. Icelandair is confused. Is iAero putting its resources back to work or are their resources already back to work and available? It is Icelandair's understanding that Swift does not currently have available, the aircraft which the charterer requires:

It is Icelandair's understanding that Swift's fleet consists of B737-400s. The Department will observe that executed agreement between Icelandair and Anmart is for a B757-223. As the Department knows, the B757 has far larger baggage holds than the 737-400s. Maximum baggage capacity is critical to the proposed charter application. This is so because Anmart's clientele on this route are primarily Cuban-Americans visiting family. As such, they routinely and reliably travel with as many as 5 bags each.<sup>6</sup>

Upon information and belief, Swift lacks the required approvals from the Cuban government to operate the proposed flights. Upon further information and belief, there remains a sufficient number of unused and unclaimed flights from the current fiscal year pool for the proposed flights and no other carrier has any applications pending.

It is Icelandair's understanding that the charterer, Anmart, selected Icelandair to provide these services because it is very satisfied with the product and services delivered thus far and the charterer has considerable latitude on its selection of preferred air carrier and determination of the aircraft type it requires.

Congress has long held that the reliable transportation of persons, property and mail to/from the United States is squarely in the public interest. Upon information and belief, the charterer, Anmart, is a U.S. entity and the overwhelming number of its passengers are U.S. citizens. In light of the foregoing, Icelandair fails to appreciate how the public interest would be served by denial of its instant applications.

Finally, Swift alleges an intent by Icelandair to establish a long term 7<sup>th</sup> freedom operation between the United States and Cuba. It also alleges that Icelandair is acting "opportunisticly" with respect to aircraft allegedly not elsewhere deployed. Swift's imaginary allegations are nowhere supported by any objective reference and Icelandair vehemently denies them. The Department should properly reject Swift's objection and grant Icelandair the relief sought.

Respectfully submitted,  
ICELANDAIR



Jonathan A. Fuchs  
General Counsel - Americas


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<sup>6</sup> Our first authorized B757 flight from Orlando to Havana had just over 100 passengers, but 54 bags were left behind - due to exhausted baggage hold space. Had this been Swift's B737-400 instead, perhaps as many as 90 bags would have been left behind.

CERTIFICATE OF SERVICE

I, Jonathan A. Fuchs, hereby certify that a true copy of the foregoing document was served on the 27 day of DECEMBER, 2021 on the following by electronic mail.

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